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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.689 of 2005

APPELLANT ACCUSED (In Jail)		N.V. Ramanna, S/o Venkanna,
	Vs	
RESPONDENT		State of Chhattisgarh

JUDGMENT

Post on 09th October 2007

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR
CRIMINAL APPEAL NO.689 of 2005

APPELLANT ACCUSED (In Jail)	N.V. Ramanna, S/o Venkanna, aged about 45-46 years, Occupation Motor Mechanic, R/o Jajji Nagar, Ankapali, Vishakhapatnam (A.P.)
Vs	
RESPONDENT	State of Chhattisgarh through District Magistrate, Uttar Bastar, Kanker (C.G.)

Present:

Mr. Ravindra Agarwal, Advocate for appellant.

Mr. Arun Sao, Government Advocate for the State.

J U D G M E N T

(Delivered on 09.10.2007)

Dhirendra Mishra, J:

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 19th July, 2005 passed in Special Case No.5/05 whereby learned Special Judge under N.D.P.S. Act, Bastar at Jagdalpur has convicted the appellant herein and other co-accused under Section 20 (B) (ii) (C) of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') and sentenced the appellant to undergo R.I. for 10 years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo additional R.I. for 5 years.

2. Briefly stated, the case of the prosecution is that on 27.1.2005 around 18.20 hrs Shri R.K. Sahu, Sub Inspector posted at Police Station Kanker received secret information that two persons in a white ambassador car bearing registration number AAV/7844 are carrying cannabis (Ganja) and they are standing before Pappu Dhaba, whereupon, secret information memo of Ex.P-3 was

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prepared in the presence of Raja Chourasia & Santosh Verma. Written report of this information was forwarded to the Sub Divisional Officer (Police), Kanker and since he was on tour in connection with the election duty, R.K. Sahu, Sub Inspector along with other police personnel and witnesses Raja Chourasia & Santosh Verma proceeded for the place of incident in the government vehicle and this was also recorded in the daily diary. They found the accused persons standing near the ambassador car. On interrogation the accused persons told their names and stated that they are the residents of Vishakhapatnam. They apprised the accused persons about the secret information and their intention to search the car and accordingly a notice under Section 50 of the Act was given to them apprising regarding their rights to be searched either in presence of the Gazette Officer or the Magistrate. After giving their personal search vide Ex.P-5 the person of the accused persons were searched, however, no objectionable articles were found on their person. Thereafter, search memo (Ex.P-7) of the car was prepared, the car was searched and 12 bags & 41 packets were found from the rear seat and dickey of the car. On examination the substance was identified as cannabis vide Ex.P-9. All the bags were mixed to make homogenous mixture vide Ex.P-8. After weighment of the seized contraband vide weighment memo of Ex.P-2, it was found to be 250 Kg, out of which 100 gram contraband was taken and two samples of 50 gm each was prepared and the same was sealed. Rest of the contraband was packed in 6 sacks and memo of impression of seal by which the samples and remaining contraband was sealed was prepared vide Ex.P-12 to Ex.P-14. 250 Kg cannabis along with two sample packets was seized from the co-accused S. Sreenu Naidu vide Ex.P-10.

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One white ambassador car, from which cannabis was seized, mobile phone of Panasonic company, certificate in relation to the pollution control of the above car and driving license of appellant herein were taken into possession from the appellant herein vide Ex.P-11.

3. After returning to the police station around 22.55 hrs along with seized contraband and accused persons, FIR (Ex. P-21) was registered and both the accused persons were arrested. Seized articles including seized contraband were handed over to the In-charge Maalkhana. Information about the offence was sent to the superior officer on the following day on 28.1.2005. Both the packets of sample along with memo of the Superintendent of Police were sent through Constable Sundar Deewan to the Forensic Science Laboratory on 29.1.2005 and on examination the same was confirmed as cannabis.

4. After completing investigation charge sheet was filed before the Special Court. During trial, five witnesses were examined, thereafter, statements of accused persons were recorded wherein the appellant herein denied the circumstances appearing against him and pleaded innocence & false implication. He also stated that he along with Sreenu Naidu were going by truck from Visakhapatnam to Bhilai to attend the marriage ceremony, the driver had stopped the truck at Dhaba, driver & cleaner were sleeping after taking their meals, at that time the police reached there, asked their names, took them in a police vehicle to the police station, obtained their signatures under duress on various papers and also seized mobile phone and driving license. No cannabis was seized from him. However, learned trial Court after hearing learned counsel for the respective

parties, convicted & sentenced the appellant herein as mentioned above.

5. It was argued on behalf of the appellant that the prosecution has failed to establish the possession of seized contraband from the present appellant, as from perusal of the seizure memo of contraband it is evident that the same is shown to have been seized from co-accused Sreenu Naidu. From the evidence available on record both of them were standing near the ambassador car and there is no evidence that they were in fact traveling by that ambassador car. Referring to the statement of Santosh Verma (PW-3) it was contended that this witness has stated that seized car was in fact brought from a distance of half kilometer by towing the same near their Dhaba by the police and thus, there is no evidence that the appellant was in possession of the contraband much less the conscious possession. It was further argued that after seizing contraband the investigating officer is duty bound to handover the charge of seized contraband to the Station House Officer of the concerned police station, who on receipt of the article shall keep the same in the safe custody pending the orders of the Magistrate and affix his seal to such article or sample with the seal of the officer in-charge of the police station. However, in the instant case there is absolute non-compliance of the provisions of the Act. Referring to the deposition of Head Constable Mersingh Tekam (PW-4) it was contended that it was not mentioned in the Maalkhana register (Ex.P-17) that the jute bags containing cannabis were sealed. Reliance is placed on **Gurbax Singh Vs. State of Haryana**[1], **Avtar**

[1] AIR 2000 SC 1002

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Singh and ors Vs. State of Punjab[2] ; Ramji and two others Vs. State of Chhattisgarh[3] & Karan Singh Vs. State of Chhattisgarh[4].

6. On the other hand, learned counsel for the State has supported the judgment of trial court.

7. I have heard learned counsel for the parties.

8. R.K. Sahu (PW-5), Sub Inspector, who has conducted the investigation, has deposed that he received secret information that two persons are carrying contraband in white ambassador car. After preparing secret information memo in the presence of witnesses Santosh Verma & Raja Chourasia and after forwarding the written report to the superior officer, he proceeded for the place of incident along with the police party, two witnesses and other necessary kit for investigation. When they reached near Pappu Dhaba, they saw the accused persons standing near the white ambassador car. On interrogation they told their names and thereafter, they were apprised about the nature of information received by them. The accused persons were also apprised about their rights under Section 50 of the Act. Personal search of the police was given to the accused persons and thereafter the search of the accused persons was conducted, however, nothing incriminating was found from their persons. Thereafter the vehicle was searched and on search 12 bags and 41 packets were found on the rear seat & dickey of the car vide search memo of Ex.P-6. On examination, the same were identified as cannabis. After weighment, the seized contraband was found to be 250 Kg. and accordingly, weighment memo was prepared. Two samples of 50 gm each was taken out in two different

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[2] 2002 SAR (Criminal) 781
[3] 2006 (4) M.P.H.T. 44 (CG)
[4] 2006 (3) M.P.H.T. 1 (CG)

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bags after making homogenous mixture of the seized contraband in different bags. Thereafter, sample packets were sealed and the seized contraband was packed in six gunny bags and the gunny bags were also seized and usual panchnama were made in this regard. White ambassador car, in which cannabis was found, one mobile phone, driving license of the appellant herein was seized from the appellant herein, whereas, 250 kg of contraband and two packets of samples were seized from co-accused Sreenu Naidu. After completing search, seizure and other necessary formalities, the police party returned to the police station along with accused persons, seized contraband and vehicle, where FIR of Ex.P-21 was registered and the accused persons were arrested. Seized contraband, vehicle and other articles were handed over to the In-charge, Maalkhana for safe custody. Information about the above incident was forwarded to the superior officer on 28.1.2005 vide Ex.P-23 and two sample packets marked as A-1 & A-2 were sent to the Forensic Science Laboratory, Raipur through Constable Sundar Deewan along with memo of Superintendent of Police on 29.1.2005 vide Ex.P-24.

9. Sunil Tiwari (PW-1) has proved the weighment memo of Ex.P-2 and stated that weighment of the contraband was done by him and on weighement the contraband was found to be 250 kg.

10. Raja Chourasia & Santosh Verma are the signatories of all the documents prepared during the investigation from Ex.P-2 to Ex.P-16. Raja Chourasia (PW-2) has stated that he had gone to Kanker when he was called by the police. After some time he reached Dhaba and saw the white ambassador care parked before the Dhaba. The police personnel had

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opened the dickey of the car, at that time he was present nearby. In that car there were number of gunny bags and after opening one packet it was identified as cannabis. However, all the packets were weighed and the same was 2 quintal & 50 Kg. Nobody was present inside the car, however, two accused persons present in the court were standing with the police at that time and the police had taken both the accused persons along with them. He has been declared hostile and in the cross-examination by the police he has admitted that in his presence the police searched the accused persons as also the car and on such search 12 bags and 41 packets containing cannabis were recovered and he had identified the same after testing, smelling and burning it. In the cross-examination by the defence this witness has admitted that only 3-4 packets were opened in his presence and rest of the packets were not opened at the time when he signed the papers. Santosh Verma also signed the papers. On some papers he signed on the following day in the police station.

11. Santosh Verma (PW-3) has also been declared hostile, however, he has stated in his examination-in-chief that both the accused persons present in the Court came to his Dhaba in a white ambassador car from Jagdalpur side, there was break down in the car at a distance of half kilometer from where the same was brought to the Dhaba by towing by the police persons and the car contained Ganja. The same was recovered before him and Raja Chourasia and it was shown to them. He has also admitted his signature in all the papers of Ex.P-2 to Ex.P-16 prepared during investigation.

12. So far as the arguments advanced by learned counsel for the appellant that there is no evidence available on record

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that the contraband was seized from his possession, as the seizure of cannabis has been effected from the co-accused is concerned, the Investigating Officer has categorically stated that he received secret information that two persons are carrying cannabis in a white ambassador car, whereupon, he reached the spot and saw the appellant herein with co-accused standing near the car and thereafter the car was searched and cannabis, as already mentioned above, was found stocked in the dickey and rear seat of the car. This fact is also stated by Santosh Verma (PW-3) that both the accused persons came by white ambassador car from Jagdalpur side to their Dhaba and the same was searched in their presence by the police and cannabis was seized from there. Similar is the evidence of Raja Chourasia (PW-2). The above version of independent witnesses has not been challenged in their cross-examination by the defence.

13. In the matters of Awtar Singh & others[2] the Hon'ble Apex Court has held that for offence under the Act possession is the core ingredient to be established. Defining the word 'possession' it has been held that the same has different shades of meaning and it is quite elastic in its connotation. Possession and ownership need not always go together but the minimum requisite element which has to be satisfied is custody or control over the goods and considering the facts of that case where the contraband was being carried in a truck, two of the accused persons were sitting on the bags in the truck, whereas, one was driving the vehicle. Two persons sitting in the truck ran away leaving vehicle and no investigation was directed to ascertain the role played by each of the accused persons, it has been observed that the accused persons did not explain the circumstances in which they were traveling in the truck and their silence is the

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strong circumstance that can be put against them. A presumption under Section 114 of the Evidence Act could be drawn against them, however, as no question was put to the accused persons under Section 313 of Cr.P.C. that they were in possession of the contraband placed in the vehicle, the Supreme Court extended all the three accused persons benefit of doubt and acquitted them.

14. However, in the instant case, the case of the prosecution is that there were only two occupants i.e. appellant and one another, and both of them were apprehended when they were standing near the white ambassador car and they were seen by the witnesses coming to the Dhaba in the white ambassador car, which contained the contraband, and as such, it is established that the appellant was in the possession of the contraband.

15. In the matter of **Madanlal and another Vs. State of Haryana**[5] the Hon'ble Supreme Court while dealing with Sections 35, 54 & 20 of the Act has held that once the possession is established, burden is on the accused to prove that it was not the conscious possession. Where the contraband was seized during the search of a car in which accused persons were traveling it was held that conscious possession of all the accused persons including the driver of the vehicle was established and they were held guilty of offence.

16. So far as the argument of learned counsel for the appellant based on the judgment of the Hon'ble Apex Court in the matter of Gurbax Singh[1] and the judgments of this High Court in the matter of Ramji & two others[3] & Karan Singh [4] that there is complete non-compliance of Section 55 of the Act, as the Station House Officer after receiving the

[5] (2003) 7 SCC 465

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charge of the seized contraband did not seal the bags of contraband and sample prepared during investigation with the seal of Officer In-charge of the police station before placing the same for the safe custody is concerned, it is settled law that provisions of Sections 52, 55 & 57 are not mandatory but only directory. However, failure of complying with the provisions shall have bearing on appreciation of evidence regarding arrest of the accused or seizure of the article, as held in Gurbax Singh[1]. Further, in the matter of **Babubhai Odhavji Patel and others Versus State of Gujarat**[6] also it has been held that Sections 52, 55 & 57 are not mandatory but only directory.

17. In the instant case, there is un-rebutted version of the investigating officer R.K. Sahu (PW-5), who has categorically deposed during trial that after affecting seizure he had drawn two samples of the contraband after making homogenous mixture of the seized contraband and thereafter sealed the same in presence of the witnesses as also six bags in which contraband was placed and thereafter memo regarding such sealing including the memo of impression of seal was also prepared and all the articles were handed over to the In-charge Maalkhana for safe custody. There is no cross-examination by the defence to challenge the above version of the investigating officer and from perusal of the report of Ex.P-1 of the FSL it is seen that the articles were received by the FSL in a sealed condition and the report contains the impression of seal also. It is not the case of the defence that the seal was tampered with or the articles, which were received from the FSL after examination were not the same articles which were seized from the accused persons and therefore, non-compliance of Section 55 will not vitiate the trial.

[6] (2005) 8 SCC 725

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18. In the light of un-rebutted testimony of the investigating officer Shri R.K. Sahu (PW-5) regarding sealing of samples as also the six bags of seized contraband, the admission of Mersingh Tekam (PW-4) that in the Maalkhana register of Ex.P-17 it is not mentioned that the bags were sealed is a mere omission and because of this omission the version of the investigating officer cannot be discarded. The judgments of this Court in the matter of Ramji & two others[3] & Karan Singh[4] are distinguishable on facts and even otherwise, the principles laid down by the Hon'ble Supreme Court in the matter of Gurbax Singh[1] & Babubhai Odhavji Patel and others[6] has not been considered in the above judgments and therefore, the above judgments are of no help to the appellant.

19. Thus, from the statement of R.K. Sahu, Sub Inspector, who has conducted the investigation and proved the documents prepared during investigation including seizure of the contraband from the accused persons and which was ultimately confirmed to be cannabis by FSL and version of the investigating officer is corroborated in material particulars from the statement of panch witnesses namely Raja Chourasia (PW-2) & Santosh Verma (PW-3), the prosecution has established the seizure of 250 Kg of cannabis from the appellant beyond reasonable doubt. The special court after appreciating the evidence available on record in detail and after considering the arguments of learned counsel for the defence has held the appellant guilty by the detailed and well reasoned impugned judgment and convicted the appellant under Section 20 (B) (ii) (C) of the Act and sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.1,00,000/-. However, the jail sentence of 5 years for default of payment of fine is unreasonable and the same deserves modification.

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20. In the result, the appeal is partly allowed. Conviction of the appellant under Section 20 (B) (ii)(C) of the Narcotics Drugs & Psychotropic Substances Act, 1985 and sentence imposed upon the appellant to undergo R.I. for 10 years and to pay a fine of Rs.1,00,000/- is hereby maintained. However, the jail sentence imposed on default of payment of fine is modified and it is directed that in default of payment of fine of Rs.1,00,000/-, the appellant shall undergo additional R.I. for 1 year in place of 5 years as ordered by the special court.

Sd/-
Dhirendra Mishra
Judge

Roshan/-